

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 74-1583

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

VINCENT ROLLINS,

Appellant.

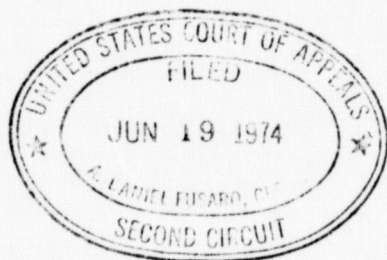
Docket No. 74-1583

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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
FEDERAL DEFENDER SERVICES UNIT  
606 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

WILLIAM EPSTEIN,  
Of Counsel

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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE TYLER

(2)

D. C. Form No. 100 Rev.

72 CRIM 509

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

v3.

Dean C. Rohrer, AUSA

VINCENT ROLLINS

For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DIS.
J.S. 2 mailed <input checked="" type="checkbox"/>	Clerk				
J.S. 3 mailed <input checked="" type="checkbox"/>	Marshal				
Visitation Comp. #72-1133	Docket fee				
Title 21					
Sec. 812, 841(a)(1) 841(b)(1) (A)					
Possess with intent to distribute heroin, I.					
two counts					

DATE	PROCEEDINGS
4-28-72	Filed Indictment.
5-8-72	Robert Kisanof, Esq., -Assigned as Atty. under C.J.A. by Magistrate Murray Mogel of counsel - Adj. to 5-15-72 Ryan, J.
5-15-72	Pleads not guilty - Bail cont'd (\$5,000 P.R.B.) Motion ret. in 10 days. GROANE, J.
10-13-72	Atty. present) Deft. not present) Motion by deft's attorney to dismiss indictment. - Granted, pursuant to Rules of the Second Circuit (subdivision 4 & 5 of the year 1971 as amended. Re: "Prompt disposal of Cases and Rule 48 of the Federal Rules of Criminal Procedure. ONLY COPY AVAILABLE Tyler, J.
11-10-72	Filed affidavit and Order to show Cause: why an Order should not entered extending its time to appeal the decision of the Court of October 13, 1972, pursuant to Rule 4(b) of the Federal Rules of Criminal Procedure. (see file)

DATE	PROCEEDINGS
11-6-72	Filed motion by Govt. for an order reinstating the indictment - ret. 11-13-72
11-6-72	Filed memorandum of law by Govt. in support of above motion
11-13-72	Filed memo endorsed on Govts motion to reinstate indictment. Motion denied. - So ordered. --- Tyler, J.
11-13-72	Filed notice of appeal by Govt. from both the Oct. 13, 1972 order of Judge Tyler dismissing indictment in this matter, and the Nov. 13, 1972 order of Judge Tyler, on the motion for reconsideration of that decision (copies mailed to deft. and US Atty's Office)
<del>12-13-72</del>	<del>Filed Transcript of record of proceedings, dated 11-13-72.</del>
<del>12-13-72</del>	<del>Filed Transcript of record of proceedings, dated 11-13-72.</del>
<del>12-13-72</del>	<del>Filed Transcript of record of proceedings, dated 11-13-72.</del>
12-19-72	Filed stipulation an exhibit necessary for determining the appeal.
<del>12-13-72</del>	<del>Filed Transcript of record of proceedings, dated 11-13-72.</del>
<del>12-14-72</del>	<del>Filed Transcript of record of proceedings, dated 11-13-72.</del>
<del>12-13-72</del>	<del>Filed Transcript of record of proceedings, dated 11-13-72.</del>
12-21-72	Vincent Rollins-Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.
4-27-73	Rollins-Filed true copy of C.A. order (with opinion attached) that the be remanded to the district Court.
5-28-73	Filed affdvt. of Dean C. Rohrer, Esq. in response to the May 15, 1973 affdvt. of defendants counsel, Murray Mogel, Esq.
6-13-73	Filed Opinion # 39556- The charges contained in Indictment 72 cr 509 must be dismissed. So Ordered-Tyler, J. mailed notices.
6-13-73	VINCENT ROLLINS-Filed deft's memorandum of law.
6-13-73	VINCENT ROLLINS-Filed affdvt of M.Mogel in support of motion to dismiss.
6-13-73	VINCENT ROLLINS-Filed affdvt of S.A.Schaffer in opposition to motion to dismiss.
7-12-73	<i>Filed Transcript of record of proceedings, dated: May 3, 1973.</i>
7-12-73	Filed Govt's notice of appeal from the order of Judge Tyler as entered June 13, 1973
7-13-73	Filed notice to the docket clerk that the record on appeal has been certified and transmitted to the U.S.C.A. on 7-13-73.
7-3-74	Filed judgment from U.S.C.A. for the Second Circuit. Order of S.D.N.Y. is reversed and action remanded to said District Court for further proceeding. A. DANIEL FUSARO, Clerk, U.S.C.A.



DATE	PROCEEDINGS
2/7/74	Filed Ex Parte application for subpoenas and order under Rule 17b FRCP. Tyler, J. ma
2/8/74	Filed Memo-Ent. on letter dtd 2/6/74. Upon the honored submission dtd 2-6-74 of counsel for the deft, the trial of this action is adj'd to 3/18/74 or as soon thereafter as this court can reach the case. Tyler, J. ma
3/20/74	Filed deft's V. Rollins waiver of trial by jury. Tyler, J.
4/26/74	Filed JUDGMENT (atty present) It is adj. that on each of counts one and two the deft is placed in custody of the Atty Gen. for imprisonment for a period of TWO (2) YEARS on each count to be served CONCURRENTLY with each other. It is adjudged that the execution of sentence is SUSPENDED and the deft is placed on Probation for a period of FIVE (5) YEARS subject to the stand probation order of the Court. Probation is to commence immediately and is not stayed pending appeal. TYLER, J. 4/29/74 Issued copies 4/29/74 ent.
4/29/74	Filed notice of appeal from judgment dtd 4/26/74. Leave to file appeal in forma pauperis is granted. Tyler, J. mailed copies.
5/16/74	Filed transcript of record of proceedings dated 1/15/74
5/16/74	Filed transcript of record of proceedings dated 1/31/74
5/16/74	Filed transcript of record of proceedings dated 3/18/74
5/16/74	Filed transcript of record of proceedings dated 4/26/74

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RAYMOND F. BURGHARDT, Clerk

By *William J. Freeman*  
Deputy Clerk

USA-33s-527 - IND/INF - DISTRIB. POSSES NARC. DRUG  
Ed. 5-10-71

DCR:rs  
72-1133

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

72 CRIM. 509

UNITED STATES OF AMERICA

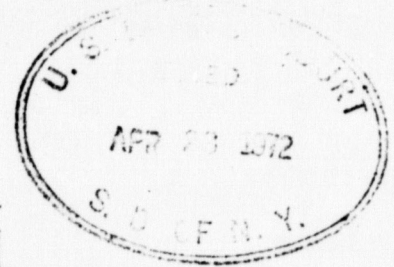
-v-

VINCENT ROLLINS,

Defendant

INDICTMENT

72 Cr.



The Grand Jury charges:

On or about the 2nd day of November, 1971,  
in the Southern District of New York

VINCENT ROLLINS,

intentionally  
the defendant, unlawfully, ~~wilfully~~ and knowingly did  
distribute and possess with intent to distribute a  
Schedule I narcotic drug controlled substance, to wit,  
approximately 8.1 grams of heroin.

(Title 21, United States Code, Sections 312,  
841(a)(1) and 841(b)(1)(A).)

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APR 23 1972



USA-33s-527A - IND/INF - Distrib. Possess Narc. Drug (Succeeding Count)  
Ed. 5/10/71

DCR:rs  
72-1133

SECOND COUNT

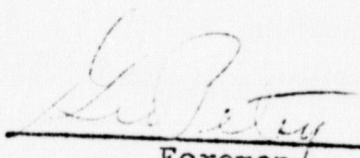
The Grand Jury further charges:

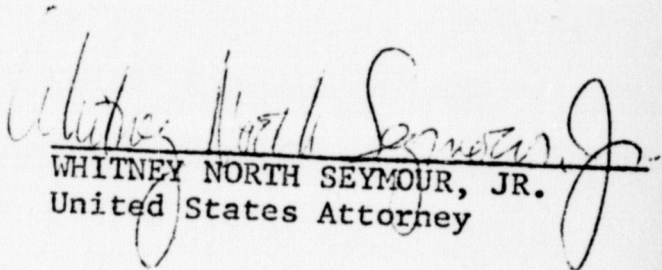
On or about the 25th day of January, 1972,  
in the Southern District of New York,

VINCENT ROLLINS,

intentionally  
the defendant , unlawfully, ~~voluntarily~~ and knowingly did  
distribute and possess with intent to distribute a  
Schedule I narcotic drug controlled substance, to wit,  
approximately 11.28 grams of heroin.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

  
Foreman

  
WHITNEY NORTH SEYMOUR, JR.  
United States Attorney

THE JUDGE'S FINDINGS ON THE ISSUE OF  
OFFICER MARTINEZ'S COMPETENCY



a witness with recollection of the facts.

I therefore respectfully submit that there is insufficient evidence for a trier of fact to make a determination beyond a reasonable doubt of guilt.

THE COURT: I respectfully disagree. Martinez' demeanor and responses to the questions placed to him on direct and cross and as well by the judge indicated that it is true without refreshing his recollection as to the events which took place over two years ago was very difficult, if not impossible for him, but the same was true with respect to Detective LaBriola, who admitted that he wasn't too clear on any of the dates, the hours and the details without refreshing his recollection by reading his reports.

Not only that, not only is it true that Agent Martinez, or I should say Patrolman Martinez conceded he was unable to segregate out so much of what he was testifying as being based squarely on his reports as considered and compared with his memory, but I thought that was an honest answer which is generally true with most witnesses in these and other cases in courts like this.

Second of all, although he did complain of repetitive episodes of vertigo continuing right up to his most recent this morning, apparently from his own

1  
2 testimony, they did not last very long and he stated  
3 unequivocally and rather forcefully as I remember it, in no  
4 circumstances did he ever see any indication that he had  
5 been suffering from something approaching amnesia as a  
6 result of his injuries on July 20, 1973 in the offices of  
7 the Joint Drug Task Force at 201 Varick Street.  
8

9 Now, it is true, of course, and I think it should  
10 be observed to you and your client particularly in all  
11 fairness that there were certain details about which  
12 he was a little hazy but that falls far short of the mark  
13 of establishing to me that his testimony was parrot-like  
14 or for any other reason incompetent.

15 I think as I see it, we have nothing more or less  
16 than the usual credibility question plus the usual  
17 problem where you have events going back more than two  
18 years which might raise the question of whether or not he  
19 really has as good a memory of these events as the govern-  
20 ment would like to argue that he does.

21 But to ascribe this to falling so far short of  
22 the mark as to render the situation one where your client is  
23 not able to confront the witnesses against him, I don't  
24 think that is even a close question. Put differently,  
25 I don't think it is even a close question as to his  
competence to testify.



He is an unusually alert and articulate witness and I think his candor, perhaps, was perhaps more in his favor than against him, but that doesn't mean that we have anything other than an ordinary garden variety recollection problem and credibility problem which I am going to consider, I trust when it comes to deciding this case.

The motion for a directed acquittal is denied on the other ground that I believe the government under the higher standards required by this circuit, has made a sufficient showing.

MR.MOGUL: The defense calls Vincent Rollins. V I N C E N T R O L L I N S, the defendant herein, called in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOGUL:

Q Mr. Rollins, what is your date of birth?

A August 5, 1934.

Q Where were you born?

A Chicago, Illinois.

THE COURT: Where were you born?

THE WITNESS: Chicago, Illinois.

Q What was the extent of your education in Chicago?

A A little over two and a half years of college.

THE JUDGE'S FINDINGS ON THE ISSUES  
OF GUILT



1 rkbr

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2 stated before?

3 MR. MOGUL: Of entrapment.

4 THE COURT: Now on the issue of entrapment?

5 MR. MOGUL: Yes, your Honor, and that the issue  
6 I submit has been raised. There has been no evidence  
7 presented by the government that could lead a trier of  
8 fact to believe that there was a predisposition to commit  
9 the crimes alleged in the indictment.

10 THE COURT: I am sorry, but I disagree.

11 In October of 1971 when Vincent Rollins was  
12 about 37 years of age, I believe as he himself conceded  
13 on the stand, the first transaction took place as alleged in  
14 Count 1 of this indictment and that the testimony of the  
15 agents as he himself admitted was substantially correct.

16 Further than that, I do not believe him when he  
17 says that Flocco made a great specific to do about being an  
18 addict and being in trouble and needing help. I think  
19 all that happened was, the person known as Mike who was a  
20 co-venturer with Vincent Rollins and Vincent Rollins discuss-  
21 ed a sale and there was no great stress upon the question  
22 of whether or not Mr. Flocco as detective or Patrolman  
23 Martinez was known in his undercover capacity in this  
24 case.

25 I don't think these are the kind of matters that

were discussed on the street nor were they discussed when the three of them went to the apartment at 747 Melrose Avenue on November 2nd.

I also do not believe the defendant when he says contrary to what the two police officers said that he left his car, or I should say the two police officers, Detective LaBriola said that he, Rollins left his red Volkswagen and went to the outside vestibule or hallway of this building located at 2021 Lexington Avenue. Put more precisely, I agree with LaBriola that the defendant did go there and stand in the hallway. He did not, as he himself Rollins testified, stand near his car.

Further than that, when the two men, that is, the defendant and Mike returned, drove back to 747 Melrose, I accept the version of what went on inside the apartment as testified to by Patrolman Martinez, in large measure admittedly from his reports which he used to refresh his recollection. Nevertheless, I find specifically as Martinez said and contrary to what Rollins said, all three men went into the kitchen. The package was delivered to Martinez at that point. Mike handed Vince the package and told Vince to give the package to Martinez which Vince did.

Inside the kitchen Martinez looked at the



2 package, made sure it contained a white powder and then  
3 handed not to Rollins as admittedly but to Mike \$450 in  
4 cash.

5 This testimony in essential outline, albeit not  
6 the details as to what went on inside apartment 58 at 747  
7 Melrose were substantially verified or corroborated by  
8 the surveilling witness.

9 Second of all, in regard to the sale charged  
10 in Count 2, again I substantially believe Patrolman  
11 Martinez operating undercover and Detective LaBriola as the  
12 surveilling agent and I believe them partly because Vincent  
13 Rollins even admitted that their version of what  
14 went on on January 25, 1972 was substantially correct.

15 In this particular transaction, I find that  
16 Rollins delivered in his Volkswagen a package containing  
17 about 11 grams plus of cocaine of purity less than  
18 the purity of that in the first delivery of 1/2 ounce.

19 MR. NESLAND: I believe your Honor misspoke.  
20 It is heroin, rather than cocaine.

21 THE COURT: Excuse me, heroin in excess of 11  
22 grams net weight, of a purity of about 27 percentile, whereas  
23 as the stipulation shows, the purity of the first delivery  
24 of a smaller amount was about 45 per cent.

25 Now, in both of these transactions, I am convinced

beyond a reasonable doubt that Vincent Rollins knew what he was doing, that he had a predisposition to traffic in heroin hydrochloride and that he was by no means entrapped by any excessive entreaties or other misconduct or pressure or coercion on the part of the undercover agent or the informer.

I am satisfied by this as I have already said by his own admissions, by his own confusing and confused testimony which he gave on direct and cross examination here today.

It is a tragic situation because this Court infers that Vincent Rollins is an intelligent man, but he was unfortunately caught red handed. He was supplementing his income, although we do not know the details of how he and Mike on the first deal and he and either Mike or some person unknown to the Court and to counsel, but surely, he shared in the proceeds and that was his expectation at the very least.

There is no serious grounds for even maintaining a plausible, let alone credible argument of entrapment in this case whatsoever.

It is true that the agents due to the long passage of time since the events in question had to refresh themselves from their reports. That I do not deny. That was made abundantly clear by particularly defense counsel



1 rkbr

2 in his cross examination in this case, but that to me is per-  
3 fectly understandable if anyone has any doubts as to how  
4 this Judge acting for this Court came to this conclusion,  
5 I point again to the sad but pointed admissions of Mr.  
6 Rollins that the versions of the agents were pretty much  
7 correct as far as they went.

8 That being so, one cannot under any stretch of  
9 the imagination condemn the agents out of hand for  
10 being totally forgetful or in the case of Agent Martinez,  
11 because of his accident in his office on July 20, 1973  
12 being an incompetent witness which I have already  
13 found that he was not.

14 A couple of other matters: There is, of course,  
15 the testimony which came in perfectly understandable in  
16 human terms from the friends of Vincent Rollins. I have  
17 no difficulty at all in finding the testimony of Miss Elinor  
18 Carter and Mr. Mario Disdiel, whose testimony was of no  
19 consequence because he himself admitted he never received  
20 any telephone call from a man holding himself out as Flocco and  
21 therefore his testimony which is vague in the extreme, to put  
22 it kindly, was absolutely a nullity as far as persuading  
23 this Court of anything whatsoever having to do with this  
24 case.

25 In regard to Miss Carter, I can only say that

2 she is mistaken. I do not wish to condemn her out of  
3 hand as being a prevaricator. I believe that love and the  
4 passage of time and the recitation of the possible defenses  
5 here have colored her recollections to the point of making  
6 her testimony unworthy of belief or at least of any per-  
7 suasive force.

8 That leaves us with the testimony of Stephen  
9 DiLucca, an attractive young man of tender years who  
10 despite the fact he is now eighteen has been an enlisted  
11 seaman in the United States Navy for at least a year or more.  
12 It is true that he recalls a number of telephone conver-  
13 sations. He claims that the calls came in six or seven  
14 times a week in October, November alone from a man holding  
15 himself out as Flocco.

16 I can only say that Stephen DiLucca is in my  
17 judgment sadly mistaken. It is incredible on its face  
18 that Flocco would have called that many times during that  
19 period. There was no need to from the very thrust of  
20 what was going on in this case by the admission of  
21 virtually all the witnesses who knew, namely the two  
22 agents and Mr. Rollins.

23 Passing that, I can only credit his mistaken  
24 testimony to an understandable long after the event  
25 constructed series of events geared to the defense which



2 Rollins quite understandably chose to bring to this case  
3 and though I do not think that Mr. DiLucca came in here  
4 and consciously and wilfully lied, I think his memory of events  
5 is totally unpersuasive and has been colored by the trial  
6 preparations in this case and is colored by his loyalty  
7 to Vincent Rollins who after all he almost certainly re-  
8 garded as a very nice man and understandably so.

9 Therefore, the case in chief of the government has  
10 proved beyond a reasonable doubt in respect to both counts.  
11 The entrapment defense is wholly unsupported by any credible  
12 evidence or any realistic appraisal of what was going on  
13 in the days in question.

14 If you will please rise, Vincent Rollins. This  
15 Court finds you guilty as charged of Counts 1 and 2 of  
16 this indictment. I fix sentence for April 26, 1974 in  
17 Courtroom 128 of this building at 2:15 o'clock on that day.

18 Is there any specific finding that you feel  
19 I have left out, Mr. Nesland that pursuant to the rules  
20 I didn't ask the defense?

21 I feel it is my duty to make findings in cases of  
22 this kind without being asked even though the rules say  
23 otherwise. You know the rule I am talking about. Have  
24 I overlooked something or misstated anything else in your  
25 judgment?

THE JUDGE'S SUPPLEMENTARY FINDINGS  
ON THE ISSUE OF OFFICER MARTINEZ'S COMPETENCY



1 hpd

Rollins

8

2 proceed without prejudice, of course, to his rights of  
3 appeal.

4 MR. MOGEL: Your Honor, one more matter regarding  
5 the appeal. At the conclusion of the trial, there was still  
6 open the issue of the competency of the Government's witness,  
7 Patrolman Martinez, who had sustained a head injury. As  
8 your Honor will recollect, I moved for his examination and  
9 that was denied. Your Honor directed the Government to keep  
10 me advised of the medical progress of Patrolman Martinez.

11 Mr. Nesland has represented to me that nothing has  
12 changed, that Patrolman Martinez, I believe, will return at  
13 some future time to the Columbia Presbyterian Medical Center  
14 for additional tests. But at this point the situation  
15 stands as it was then.

16 THE COURT: Then, on that basis --

17 MR. NESLAND: Your Honor, with respect to that,  
18 I cannot represent he is going to return for additional  
19 tests. My information from Mr. Martinez is he is going to  
20 return to get some pills that had previously been given to  
21 him by one of the doctors there.

22 THE COURT: Well, suffice it for me to rule flatly  
23 that based upon my examination of all of the documentary  
24 evidence and viewing his demeanor and hearing what he had  
25 to say on direct and cross at our trial, I have no hesitation

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Rollins

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in saying that he was a perfectly competent witness within the technical legal sense of that term, and the record should so show, so that if there's an issue on appeal, why, there is the finding of this Court.

MR. MOGEL: Thank you, your Honor.

MR. NESLAND: Thank you.

THE COURT: Thank you.



